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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/399,630	09/20/1999	GARY M. REYNOLDS	KCC-12.681	2481

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/399,630

Applicant(s)

REYNOLDS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-30, 32-43, 45, 46, 48-52, 54, 55 and 57-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-30, 32-43, 45, 46, 48-52, 54, 55 and 57-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 32-35, 38, 42-43, 46, 51-52, 54-55, and 57-59 are objected to because of the following informalities: In claims 32 and 35, line 2, "within" should be --by--. In claim 33, line 1, "comprising" should be --wherein said at least one thrust portion comprises--. In claim 38, line 3, "a" should be --the--. In claim 42, line 3, "gasketing assembly" should be--at least one thrust portion--. In claim 43, line 3, after "and", --the at least one thrust portion comprises-- should be inserted. In claim 46, line 2, and claims 50-51, line 3, "gasket element" should be --thrust portion--. In claim 54, line 1, "In" should be --A method of using-- and on line 6, "a" should be --the--. In claim 59, line 1, before "wherein", --wherein the at least one gasket element comprises a plurality of gasket elements and--. On line 2, "a" should be --the--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 28-30, 32-43, 45-46, 48-52, 54-55 and 57-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 28, the description of the portions on lines 9-12 with respect to each other and the stretchable material is insufficient to perform the function on lines 12 et seq. This also applies to claim 45 and claim 54. Claim 30 is redundant, i.e. see claim 28, lines 9 et seq. Also note the response to Applicant's argument's, infra.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 28-30, 32-43, 45-6, 48-52, 54-55 and 57-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Sayama.

Claims 28, 45 and 54: see embodiment of Figures 1-4 and the embodiment of Figure 5, i.e. the absorbent article is 1 and 2, the front waist section is 16, the rear waist section is 17, the stretchable material, and thereby first portion, is 22 and 23, the intermediate section is 18, the gasket assembly is 2, the gasket element is a face portion of one or both of the layers of 30 or 38, a base portion of one or both of the layers of an adhered portion of 37 or 37, a thrust portion of one or both the layers of an nonadhered portion of 37 and/or 38, and a discrete compression resistant portion 43 or 36. With regard to lines 12 et seq of claim 28 and similar language in claims 45 and 54, see col. 3, lines 56-col. 4, line 40 and Figure 4, i.e. it is the Examiner's first position that the Sayama reference teaches the function, capabilities, methodology or properties set forth in the claims. In any case, since the Sayama device includes the same structure, as best understood, see 112 rejections supra, and the device is used in the same manner, i.e. placed on a wearer, there is sufficient factual basis for one to conclude that even if Sayama does not explicitly teach the claimed function, capabilities, methodology or properties, that such are also inherent in the same structure and use of Sayama. See MPEP 2112.01. In other words, as the diaper of Sayama is place on the user, the contracted elastic members 22 and 23 are stretched or tensioned, the gasket element is deployed to move the face portion thereof towards, adjacent and into contact with the adjacent skin of the wearer and keep such contact and the gasket element is adjacent the skin of the rear waist and lower back of the wearer.

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Claims 29 and 55: see Figure 1.

Claim 30: see discussion of claims 28, 45 and 54.

Claims 32 and 35: the inner covering is 33.

Claims 33 and 46: there is a thrust portion on each side of the longitudinal centerline.

Claim 34: there is a member 43 on each side of the longitudinal centerline.

Claim 36: see col. 3, lines 37-43.

Claims 37-38 and 57: see discussion of claims 28, 45 and 54.

Claims 39 and 48: the face portion is 38, the thrust portion is the nonadhered portion of 37 and the base portion is the adhered portion of 37 and there is such structure on each side of the longitudinal centerline or layer 33 is one gasket element and layer 34 is the other.

Claims 40, 49 and 58: see Figure 5.

Claims 41, 50 and 59: see discussion of claim 39 with regard to 37 and 38.

Claims 42-43, 51-52: see discussion of claims 28, 45 and 54 and Figure 5. It is noted that the American Heritage Dictionary defines "terminal" as "Of, pertaining to, situated at or forming an end or boundary". Therefore, the claims do not require the ends of the thrust portions be discrete just that some boundary is defined of the portion, see Figures 4-5 wherein the boundaries of the portions are delineated.

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*Response to Arguments*

5. Applicant's arguments have been carefully considered but are either deemed moot in that the issue discussed has not been reraised or are deemed nonpersuasive. Specifically with regard to the redundancy of the claims, while the Examiner agrees that the terminology "deployed towards" and "deployed adjacent", by themselves, are different, the claims require that such deployment towards the wearer fills the void occurring between the article and the wearer to inhibit flow, i.e. the deployment toward is not just toward but also adjacent because otherwise the void would not be filled.

*Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

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1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to the independent claims requiring various portions of the gasket elements and their specifics.

7. Any inquiry concerning this communication should be directed to K. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-308-2617.

K.M. Reichle  
KAREN REICHEL  
SAINT LOUIS, MO

KMR

June 22, 2003